FILE COPY

FILED
DEC 16 19
CHARLES ELMORE C

No. 199

In the Supreme Court of the United States

OCTOBER TERM, 1935

FREDERICK D. DISMUKE, PETITIONER

v.

THE UNITED STATES OF AMERICA

ON A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES

INDEX

	Page
Opinions below	1
Jurisdiction	1
Questions presented	2
Statutes involved	2
Statement	3
Summary of argument	8
Argument:	
I. The Tucker Act does not confer jurisdiction on a district court to entertain a suit for an annuity under the Civil Service Retirement Act	10
II. The administrative remedy afforded by the Civil Service Retirement Act is exclusive	21
III. A district court has no jurisdiction to render a declaratory judgment in a suit against the United States under the Tucker Act	29
IV. While serving as a field deputy marshal between the years 1895 and 1902, the petitioner was not an employee in the civil service of the United States within the meaning of the retirement legislation	30
Conclusion	34

CITATIONS

Cases:

Aetna Insurance Co. v. *Jones*, 78 S. C. 445	16
Alabama v. *United States*, 282 U. S. 502	13
Baltimore & Ohio R. R. Co. v. *United States*, 261 U. S. 592	13
Baltimore Mail Steamship Co. v. *United States*, 76 F. (2d) 582, certiorari denied Oct. 14, 1935	14
Bigby v. *United States*, 188 U. S. 400	12
Brotherhood of Locomotive Firemen and Enginemen v. *Pinkston*, 293 U. S. 96	21
Deutsch-Australische v. *United States*, 59 C. Cls. 450	14
Douglas v. *Wallace*, 161 U. S. 346	32
Finn v. *United States*, 123 U. S. 227	29
Hawkins v. *Randolph*, 149 Ark. 124	16
Hijo v. *United States*, 194 U. S. 315	12
Lynch v. *United States*, 292 U. S. 571	20, 21, 28, 29
Mara v. *United States*, 54 F. (2d) 397	25
Marion & Rye V. R. Co. v. *United States*, 270 U. S. 280	29
Meadows v. *United States*, 281 U. S. 271	24
Medbury v. *United States*, 173 U. S. 492	14

Cases—Continued. Page

Merritt v. *United States*, 267 U. S. 338 13
McBean v. *United States*, C. Cls., decided Nov. 5, 1934 25
McLean v. *United States*, 226 U. S. 374 14
Miguel v. *McCarl*, 291 U. S. 442 26
Norte v. *United States*, 294 U. S. 317 29
Powell v. *United States*, 60 Fed. 687 32
Price v. *Savings Society*, 64 Conn. 362 16
Schillinger v. *United States*, 155 U. S. 163 ..... 21, 29
Silberscheim v. *United States*, 266 U. S. 221 24
Sutton v. *United States*, 256 U. S. 575 13
Town of Concord v. *Savings-Bank*, 92 U. S. 625 28
Tatun v. *United States*, 270 U. S. 568 21
United States v. *Atchison, Topeka & Santa Fe R. Co.*, 249 U. S. 451 ..... 24, 25
United States v. *Babcock*, 250 U. S. 328 ..... 21, 25, 29
United States v. *Hvoslef*, 237 U. S. 1 14
United States v. *Jones*, 131 U. S. 1 29
United States v. *McDonald*, 72 Fed. 898 32
United States v. *Michael*, 282 U. S. 656 29
United States v. *Minnesota Mutual Inv. Co.*, 271 U. S. 212 12
United States v. *Pfitsch*, 256 U. S. 547 ..... 25, 29
United States v. *Wardwell*, 172 U. S. 48 29
United States v. *Williams*, 278 U. S. 255 24
Williamsport Wire Rope Co. v. *United States*, 277 U. S. 551 ..... 24, 25
Wintermute v. *Smith*, 30 Fed. Cas. 17897 32

Statutes:
Section 24 of the Judicial Code 35
Revised Statutes:
Sec. 780 31
Sec. 841 31
Sec. 843 31
Act of May 28, 1896, c. 252, 29 Stat. 140, 181, 182:
Sec. 9 31
Sec. 10 31
Sec. 11 31
Act of May 22, 1920, c. 195, 41 Stat. 614, 620:
Sec. 15 15
Act of July 3, 1926, c. 801, 44 Stat. 912 17
Act of May 29, 1930, c. 349, 46 Stat. 468:
Sec. 3 32–33
Sec. 4 (5 U. S. C., Sec. 698) 36
Sec. 5 31
Sec. 7 ..... 5, 28
Sec. 13 22
Sec. 15 23
Sec. 16 23
Sec. 17 (5 U. S. C., Sec. 709) 23, 38
Sec. 18 27

Statutes—Continued. Page

Act of June 16, 1933, c. 101, 48 Stat. 283, 305:
Sec. 8 (a) 39
Act of June 14, 1934, c. 512, 48 Stat. 955 (U. S. C., Title 28, Sec. 400) 30
Miscellaneous:
Executive Order dated July 21, 1930, No. 5398 22
Executive Order dated April 7, 1934, No. 6670 22
Executive Order dated June 5, 1934, No. 6731 22
Senate Report No. 99, 66th Cong., 1st Sess 17
House Report No. 120, 66th Cong., 1st Sess 16
House Report No. 942, 66th Cong., 2nd Sess 17
House Report No. 784, 71st Cong., 2nd Sess 15
American Experience Table of Mortality 21
Elliot on Contracts, Sec. 6 13
Page on Contracts, 2d Ed., Sec. 70 13
Williston on Contracts, Sec. 18 13
Report of Commissioner of Pensions—fiscal year ended June 30, 1921 17

In the Supreme Court of the United States

OCTOBER TERM, 1935

No. 199

FREDERICK D. DISMUKE, PETITIONER

v.

THE UNITED STATES OF AMERICA

ON A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The judgment of the District Court (R. 11) was entered on findings of fact and conclusions of law (R. 9–11) but without opinion. The opinion of the Circuit Court of Appeals for the Fifth Circuit (R. 48–54) is reported in 76 F. (2d) 715.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered April 19, 1935 (R. 54). A petition for a rehearing was denied May 29, 1935 (R. 55). The petition for a writ of certiorari was filed July 1,

1935 (R. 55), and was granted October 14, 1935 (R. 55). The jurisdiction of this Court rests upon Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether, in a suit against the United States brought under the Tucker Act, a United States district court has jurisdiction of a claim to recover an annuity of a retired civil-service employee.

2. Whether a claimant to an annuity under the Civil Service Retirement Act is restricted exclusively to the administrative remedies provided by the statute.

3. Whether failure to provide for a judicial review of an administrative decision denying a claim for an annuity under the Civil Service Retirement Act violates the due process clause of the Fifth Amendment.

4. Whether, in a suit brought under the Tucker Act, a district court has jurisdiction to render a declaratory judgment against the United States.

5. Whether a field deputy marshal, during the period from December 16, 1895, to April 30, 1902, who was paid on a fee basis, was an employee of the United States in the sense that time served in such capacity may be computed as accredited service in determining eligibility to an annuity.

STATUTES INVOLVED

The applicable portions of the statutes involved are set forth in the Appendix, *infra*, pp. 35–39.

STATEMENT

The facts, as disclosed by the record, may be summarized as follows:

On December 16, 1895, the petitioner was appointed a deputy United States marshal for the Northern District of Georgia (R. 14), and served continuously as a field deputy marshal on a fee basis until April 30, 1902 (R. 15). On February 7, 1902, he was appointed postmaster at Thomasville, Georgia, and continued to hold such office until April 27, 1914 (R. 15). The petitioner was appointed Federal Prohibition Director on September 10, 1921, and continued in the service of the United States until June 30, 1933 (R. 15). The aggregate period of service in these three capacities exceeds thirty years. Excluding the time served as a field deputy marshal, the petitioner's service exceeds twenty-four years, but is less than thirty years. On June 30, 1933, the petitioner was involuntarily separated from the service for reasons other than his misconduct, the reason for his separation from the service being a reduction in the force (R. 15). On June 27, 1933, he addressed a letter to the Director of Insurance, Veterans' Administration, Washington, D. C., stating that he had been a government employee for over thirty-one years; that he was fifty-eight years of age, and requested that he be advised as to the amount of money he would be required to refund in order to obtain the benefits of the Retirement Act (R. 15). The petitioner was advised that he should

deposit with the Treasurer of the United States the sum of $970.09 (R. 16), which he did. This contribution covered the period of service from September 10, 1921, to February 29, 1928 (R. 15–16). Deductions had been made from the petitioner's salary under the Retirement Law from February 29, 1928, to the end of his service (R. 17). The total amount contributed by the petitioner to the Retirement Fund was approximately $1,650 (R. 17).

Shortly after June 30, 1933, the petitioner filed a claim with the Administrator of Veterans' Affairs for an annuity under the provisions of Section 8 (a) of the Retirement Act of June 16, 1933 (R. 17),[1] which authorizes the payment of such

[1] The Federal Civil Service retirement plan was created on August 1, 1920, by the Act of May 22, 1920, c. 195, 41 Stat. 614. The scheme provides for a retirement annuity for employees in the Federal classified civil service. The privilege of receiving the annuity and its amount depends upon the length of the employee's service. Commencing August 1, 1920, a deduction is automatically made from the compensation of each employee covered by the plan and deposited in the retirement fund. This deduction originally amounted to 2½% of the base pay, but it was subsequently raised to 3½%. However, the Act provided that automatic credit shall be given for all service performed by the employee prior to August 1, 1920, without exacting any contribution with respect to such prior service. As to service performed for any period subsequent to August 1, 1920, a contribution is required in order to give credit for such service toward the retirement annuity, and if no deduction has been made for any period subsequent to that date, the employee may make a lump-sum contribution to cover such period, in order to receive credit therefor. The plan, as it

annuities to retired government employees who have rendered at least thirty years of service. On or about December 26, 1933, he was informed that his claim was rejected because he had not rendered thirty years of allowable service, as required by the Act, in that his service as a Field Deputy United States Marshal was excluded upon the ground that

---

has been amended from time to time, provides for a number of different types of annuities:

1. An employee reaching a specified retirement age, who has had at least 15 years of service, is entitled to a retirement annuity upon severing his connection with the service. For most groups of employees the retirement age is 70, although for certain specified classes it is 65 or 62. The full annuity amounts to three-fourths of the average annual pay, not exceeding $1600 per annum, for any five-year period of service selected by the employee. In order to receive the full annuity, however, the employee must have credit for at least 30 years of service. If the period of service was at least 15 years, but less than 30, the annuity is proportionately diminished. If the period of service is less than 15 years, no annuity is payable.

2. If the employee is retired for disability at any time, he is entitled to receive a retirement annuity. In the original Act a minimum of 15 years of service was required to qualify the employee for such an annuity, but by the Act of May 29, 1930, this period was reduced to 5 years.

3. Under Section 7 of the Act of May 29, 1930, any employee, who at the age of 45 or over, is involuntarily separated from the service for reasons other than his own misconduct or delinquency, and who has had at least 15 years of service, is entitled to an annuity commencing at the age of 55. The amount of such annuity likewise depends on the average salary and length of service, and if it commences at an age below 70, it is payable in a reduced amount computed according to life expectancy. It is not disputed that the petitioner is entitled to an annuity under this provision,

field deputy marshals were employees of the marshal and not of the United States (R. 17–18).[2] The petitioner was also advised that he would be allowed one year from that date within which to enter an appeal to the Administrator of Veterans' Affairs, and a copy of the rules of practice in the matter of appeal was enclosed (R. 18). He was further advised that he was at liberty to furnish material evidence for the purpose of obtaining further consideration, and that should such additional evidence be deemed sufficient to warrant reopening the case,

---

but he claims an annuity in a larger amount under the provision discussed in the next paragraph.

4. Section 8a of the Act of June 16, 1933 (Independent Offices Appropriation Act for 1934), which was in effect from June 16, 1933, until June 30, 1935, provided that a person who had not reached the retirement age, but who was involuntarily separated from the service by reasons other than his own misconduct, was entitled to a retirement annuity, provided he had fulfilled at least 30 years of service. The petitioner claims his annuity under this provision. His claim was denied on the ground that he had only 24 years of service, and was, therefore, limited to the smaller annuity referred to in the preceding paragraph.

The plan also contains provisions for a refund to the employee, or to his estate, in the event that the amount of annuity drawn by him is less than the amount that would be purchased by his contribution, or in the event that he resigns or is separated from the service prior to the accrual of an annuity.

[2] According to the ruling of the Veterans' Administration, the plaintiff is entitled to an annuity of $555.60 per annum based on 24 years' service, instead of an annuity of $1181.16, based on 30 years' service, which he claims (R. 21).

such action would be taken (R. 18). The petitioner appealed from the decision of the Director to the Administrator of Veterans' Affairs, and on March 13, 1934, the Board of Veterans' Appeals approved the decision of the Director of Insurance (R. 18–20).

The petitioner thereupon brought suit in the United States District Court for the Middle District of Georgia, to recover the amount claimed as a civil service retirement annuity under Section 8 of the Act of June 16, 1933 (R. 1–6). A demurrer to the petition (R. 8) was overruled (R. 9). An answer was thereupon filed (R. 6–8), and the case was tried on a stipulation of facts, with some additional evidence (R. 14–43). The court entered judgment in favor of the petitioner, awarding him the sum of $1,476.45, representing fifteen monthly instalments accruing from July 1, 1933, through the month of September, 1934 (R. 11). A further declaratory judgment was entered awarding the petitioner monthly instalments of $98.43 from October 1, 1934, until January 21, 1945, and monthly instalments of $102.00 from January 21, 1945, until the date of his death (R. 11). The Circuit Court of Appeals for the Fifth Circuit reversed the judgment of the District Court and remanded the cause with directions to dismiss the claim, one judge dissenting (R. 54).

SUMMARY OF ARGUMENT

1. The Tucker Act does not confer jurisdiction on a district court to entertain a suit for an annuity under the Civil Service Retirement Act. There does not exist a contract, either express or implied, between the United States and the annuitant. The United States has not agreed to pay any annuity whatsoever, but has merely by law provided for the creation of a fund out of which such annuity is to be paid. Nor is the claim one based upon a law of Congress within the meaning of the Tucker Act. In order that a claim may be founded upon a law of Congress, the Act in question must either grant the right to bring the action or create an obligation on the part of the United States in favor of the one asserting the claim. The Civil Service Retirement Act does neither.

Moreover, a claim for an annuity partakes of the nature of a pension, and the claim for the particular annuity which the petitioner here seeks is in substantial part a pension, because in order to obtain the required number of years of accredited service to come within the rate of annuity for the thirty-year period, it is necessary that he be given credit for past services performed, during which period the petitioner made no contributions. The Tucker Act expressly excludes pensions from the jurisdiction of the courts.

Finally, the judgment of the District Court, considered in the light of the fact that there was included therein a declaratory judgment, exceeded

the jurisdictional limit of $10,000, to which sum the Tucker Act limits the district courts.

2. The United States may not be sued without its consent, and is subject to suit only upon such terms and conditions as it may see fit to permit. It may provide an exclusively administrative remedy. Consideration of the Civil Service Retirement Act indicates clearly, we believe, that the remedy provided for an annuitant is exclusively administrative. If, however, any right of judicial review exists, it is limited exclusively to mandamus proceedings against an administrative official who either refuses to act or acts in plain violation of the Retirement Act. The lack of judicial review does not operate in the instant case to deprive the petitioner of property without due process of law. He may have returned to him the sum which he has deposited in the retirement fund, together with the accumulated interest, or he may receive the annuity of the fifteen-year period which amounts to over $550 per annum.

3. District Courts of the United States do not have jurisdiction to enter a declaratory judgment under the Tucker Act. When entertaining a claim under that Act, the district courts sit as courts of claims, and can perform such functions only as are authorized by the Tucker Act. The Tucker Act authorizes only a money judgment against the United States, and therefore no authority exists to enter a declaratory judgment.

4. A field deputy marshal, between the years 1895 and 1902, paid on a fee basis, was not an employee of the United States, but was an employee of the marshal only. His status has so been determined by this Court.

ARGUMENT

I

THE TUCKER ACT DOES NOT CONFER JURISDICTION ON A DISTRICT COURT TO ENTERTAIN A SUIT FOR AN ANNUITY UNDER THE CIVIL SERVICE RETIREMENT ACT

The Tucker Act, *infra,* p. 35, confers original jurisdiction upon district courts, concurrently with the Court of Claims, of all claims not exceeding $10,000 founded upon the Constitution of the United States, or any law of Congress, upon a regulation of an executive department, or upon any contract, express or implied, with the Government of the United States, or for damages, liquidated or unliquidated, in cases not sounding in tort in respect to which claims the party would be entitled to redress against the United States either in a court of law, equity, or admiralty, if the United States were suable.

The petitioner brought the instant suit in the United States District Court for the Middle District of Georgia, for an annuity under the provisions of Section 8 (a) of the Act of June 16, 1933, *infra,* p. 39, which authorized the payment of an annuity to a civil service employee who was involuntarily separated from the service after having had

more than thirty years of accredited service with the Government.

The theory upon which the petitioner apparently relies is that by the contribution of certain sums to the Civil Service Retirement Fund, a contractual relationship was established between him and the Government for the payment of the annuity, and that the refusal of the governmental agency charged with the administration of the Act to pay the annuity to which he felt he was entitled gave rise to a claim justiciable under the Tucker Act. The petitioner also suggests that should it be held that no contract exists, nevertheless the District Court had jurisdiction under the Tucker Act, as the claim is one founded upon a law of Congress. We submit that each of these contentions of the petitioner is unsound.

Obviously, no express contract exists between the petitioner and the United States, and the petitioner does not so argue. If any contract exists, it must be one implied in fact, and one which has resulted from the actions of the petitioner and the United States when considered in the light of the Civil Service Retirement Act. An analysis of that Act, we believe, clearly indicates that no contractual obligation which would bind the United States could possibly arise under the circumstances disclosed in the instant case.

The Civil Service Retirement Act, together with its amendments, provides a comprehensive plan for the retirement of Federal civil-service employees

who have reached a certain age, and who have completed a certain period of service. It constitutes a compulsory contributory pension system to be administered by certain specified agencies of the Government. The fund out of which the retirement annuity is to be paid is created in part by compulsory contribution on the part of the civil-service employees and in part by Government contributions. The Act does not bind the United States to pay annuities from its general Treasury, but provides only that when certain conditions have been met a civil-service employee shall be entitled to be paid an annuity out of the retirement fund. In respect of the retirement annuity, no privity of relationship exists between the United States and an employee. If any such relationship exists, it is one between the employee and the fund to which he has contributed. The United States, therefore, having neither directly contracted with the petitioner for the payment of his annuity, nor being required by law to pay him any such annuity, we submit that no contractual relationship exists between them. It is only where the United States is directly obligated that a contract within the meaning of the Tucker Act exists. See *Hijo* v. *United States,* 194 U. S. 315; *Bigby* v. *United States,* 188 U. S. 400; *United States* v. *Minnesota Mutual Investment Co.,* 271 U. S. 212. This Court has held that the consent of the United States to be sued in contract, express or implied, is restricted to express contracts or contracts implied in fact, i. e., real contracts, and

does not extend to quasi contracts or contracts implied in law by means of a legal fiction. *Alabama* v. *United States,* 282 U. S. 502, 506; *Merritt* v. *United States,* 267 U. S. 338, 341; *Baltimore & Ohio Railroad Co.* v. *United States,* 261 U. S. 592, 597; *Sutton* v. *United States,* 256 U. S. 575, 581.

Even if a privity of relationship existed between the annuitant and the Government, there is lacking the element of mutual consent, which is essential in order to give rise to a contract. A civil service employee is compelled by law to contribute to this fund. He has no option in the matter. The consensual element of a contract is lacking and there is no meeting of the minds. A contract must be based on the consent of both parties. *Williston on Contracts,* Sec. 18; *Page on Contracts,* 2nd Ed., Sec. 70; *Elliot on Contracts,* Sec. 6.

The noncontractual basis of petitioner's claim is brought into clear relief by the circumstances upon which it rests. His claim for an annuity based on 30 years' service is, in greater part, founded on service prior to August 1, 1920, when the original Act became effective, and for which he has made no contributions. After its passage, when petitioner was reemployed by the United States, he had no alternative but to make the contributions—assent was unnecessary and avoidance was impossible. Petitioner was retired from the service on June 30, 1933. He seeks an annuity under the Act of June 16, 1933, passed but two weeks prior to his separa-

tion from the service. It seems clear that, throughout the course of petitioner's service, he has at no time entered into relations with the Government which can be said to give rise to a contract implied in fact.

Likewise, it seems clear that this action is not one based upon a law of Congress, because the Civil Service Retirement Act merely creates the fund out of which the annuity is to be paid.[3] In order that a claim may be founded upon a law of Congress, and therefore cognizable in a district court under the Tucker Act, the Act of Congress must either grant the right to bring the action or create an obligation on the part of the United States in favor of the one asserting the claim. *United States* v. *Hvoslef*, 237 U. S. 1, 10; *Medbury* v. *United States*, 173 U. S. 492, 497; *McLean* v. *United States*, 226 U. S. 374, 378; *Baltimore Mail Steamship Co.* v. *United States*, 76 F. (2d) 582 (C. C. A. 4th), certiorari denied October 14, 1935, No. 198.

---

[3] In *Deutsch-Australische* v. *United States*, 59 C. Cls. 450, it was held that a claim for the release of certain vessels, seized at the outbreak of the war with Germany, was not a suit based upon a law of Congress, as the law in question had merely authorized the seizure of the vessels but had created no obligation on the part of the United States to pay therefor. In *Baltimore Mail Steamship Co.* v. *United States*, 76 F. (2d) 582 (C. C. A. 4th), it was held that a law restricting the interest to be paid upon steamship loans furnished no basis for the recovery of an amount exacted in excess thereof.

In the instant case, the Civil Service Retirement Act does not grant the right to an employee to bring an action against the United States for the recovery of any annuity or any sum contributed to the Civil Service Retirement Fund. Nor does it create any obligation on the part of the United States in favor of such employee. The Act does not provide that the United States shall pay the annuity, but only that the annuity shall be paid out of a particular fund. The intention of Congress (see Sec. 15 of the Act of May 22, 1920) that the fund should be augmented by annual appropriations does not create an obligation of the United States in favor of the petitioner.[4] We submit, therefore, that the claim of the petitioner is not one founded upon a law of Congress so as to bring it within the jurisdiction of the Tucker Act.

Not only does the claim here asserted fail to constitute one of the class, jurisdiction over which is conferred upon the district courts, but conversely, it is a claim over which jurisdiction has been expressly withheld from such courts.

---

[4] Only one of the committee reports appears to throw light on the character of the obligation of the United States. H. Rept. No. 784, 71st Cong., 2nd Sess., in reporting the bill which became the Act of May 21, 1930, *infra*, said (p. 10) that the "bill will make definite and certain the obligation of the Government to appropriate for the purpose of meeting its obligations under the system." Its obligations are plainly those of supporting the system, and do not run to any individual annuitant.

Under the terms of the Tucker Act, no suit will lie for the recovery of a pension.[5] A civil-service retirement annuity partakes more of the nature of a pension than a contract obligation. A pension has been defined as "An annuity from the government for service rendered in the past" *Aetna Insurance Co.* v. *Jones,* 78 S. C. 445; "A bounty for past services rendered to the public" *Price* v. *Savings Society,* 64 Conn. 362; "A regular allowance paid to an individual by the government in consideration of past services, or in recognition of merit" *Hawkins* v. *Randolph,* 149 Ark. 124. At the time that the original Act was under consideration, it was obviously the intention of Congress that the retirement fund should be created by equal contributions on the part of employees and the Government. The committee reports make plain that the plan was regarded as a system which stood midway between a wholly contributory system and one confined solely to pensions. House Report No. 120, 66th Cong., 1st Sess., pp. 3–4 (adopted by ref-

[5] It should be noted that in this respect the jurisdiction of the district courts under the Tucker Act is considerably narrower than is the jurisdiction of the Court of Claims (Judicial Code, Sec. 24, Subsec. 20; U. S. Code, Title 28, Sec. 41, Subsec. 20). Thus, the Tucker Act expressly provides that the district courts shall not have jurisdiction over cases brought to recover fees, salary or compensation for official services of officers of the United States. This limitation is not contained in the statute regulating the jurisdiction of the Court of Claims. Any argument that the annuity is not a pension, but rather deferred compensation, would thus impale itself on this jurisdictional provision.

erence in House Report No. 942, 66th Cong., 2nd Sess.); Senate Report No. 99, 66th Cong., 1st Sess., p. 4. Any contribution on the part of the Government is, of course, a gratuity, and any system based in substantial part on these contributions is a pension system.

When the Act was adopted in 1920, over six thousand employees who had passed the retirement age at that time were retired during the ensuing fiscal year with annuities ranging from $180 to $720 per year.[6] Under the Act of July 3, 1926, a more liberal method of computation was provided, which increased all annuities theretofore granted, and increased the maximum annuity to $1000 per annum. Again, under the Act of May 29, 1930, maximum annuity payments were further increased to $1200 per annum. All annuities were drawn from the civil service retirement fund, and it is obvious that the amount of the annuity or pension bears but a minor relation to the amount of money contributed by the annuitant.[7] Clearly, an employee who was

[6] Report of Commissioner of Pensions for fiscal year ended June 30, 1921, p. 33.

[7] The Act of May 29, 1930, *infra*, provides, in effect, that in computing compensation the annuity shall be composed of a sum equal to $30 for each year of service not to exceed thirty provided that this sum does not exceed three-fourths of the annual maximum basic salary for any consecutive five-year period plus the amount of annuity purchasable with the amount which stands to the credit of the annuitant in the fund. It seems clear that the basic contribution of thirty dollars for each year's service is to be borne exclusively by the Government.

retired in 1920, after a contribution of a few dollars, did not have a contract with the Government to draw $1200 per annum after 1930. The money paid to such individuals constitutes a pension, pure and simple, and, we submit, clearly indicates that the entire purpose of the Act was to provide a compulsory contributory pension system.[8]

We do not perceive wherein the annuity which the petitioner claims differs in its essential characteristics from those of persons whose retirement pay constitutes a simple pension. An analysis of the petitioner's contention clearly discloses the pension element which exists in the claim which he attempts to assert.

We suggest that this Court should take judicial notice of the fact that payment by the petitioner of $1650 was wholly insufficient to purchase an annuity of approximately $1200 per annum for a man of fifty-eight years of age, and that there must, therefore exist in such annuity the element of recognition of his past services. The gravamen of the instant suit is that in estimating the time served as an employee of the United States, the administrative authorities improperly excluded time which the petitioner served as a field deputy marshal between the years 1895 and 1902, and it was to review that specific disallowance that the case at bar was instituted. When the Civil Service Retirement Act was

[8] It may not be wholly without significance that the administration of the Retirement Act was originally entrusted to the Commissioner of Pensions.

passed in 1920, in computing the length of service and the annuities based thereon, allowance was made for past service, and no contribution in respect of such past service was required of the employee. In including, therefore, the period of time prior to 1920 and giving the same an equal effect with periods subsequent thereto during which the employee contributed, the Government, at least in so far as the prior period was concerned, in effect gave the employee a gratuity. So far as the petitioner is concerned, the administrative authorities gave him credit for over twelve years' service prior to 1920, as well as credit for approximately the same length of service subsequent to 1920. The petitioner unquestionably is entitled, on the basis of these allowances, to an annuity based on a twenty-four-year period of service which amounts to $555.60 per annum (R. 21). He, however, claims that an additional period of over six years' service between 1895 and 1902 should be allowed which would entitle him to the annuity of the thirty-year period. The inclusion of that period in computing the length of the service rendered by the petitioner would be a mere gratuity on the part of the Government which it was at liberty to grant or withhold. Should the United States at some subsequent time amend the Civil Service Retirement Act so as to provide that retirement compensation be based solely upon service rendered subsequent to 1920, it could not be urged that there was a breach of any contractual

relationship. As this Court stated in *Lynch* v. *United States*, 292 U. S. 571, 577:

> Pensions, compensation allowances, and privileges are gratuities. They involve no agreement of the parties; and the grant of them creates no vested right. The benefits conferred by gratuities may be redistributed or withdrawn at any time in the discretion of Congress. *United States* v. *Teller*, 107 U. S. 64, 68; *Frisbie* v. *United States*, 157 U. S. 160, 166; *United States* v. *Cook*, 257 U. S. 523, 527.

We think it clear, therefore, that irrespective of whether a contractual right existed in respect of the periods for which the petitioner contributed, it would be a mere gratuity, for which no action lies under the Tucker Act, to give him credit for periods in respect of which he made no contribution.

Finally, we contend that the judgment entered by the District Court exceeded the amount to which its jurisdiction was circumscribed by the Tucker Act. In addition to entering judgment for $1,476.45, the District Judge undertook to render a declaratory judgment in the amount of $1,181.16 per annum from October, 1934, to January 21, 1945, and thereafter monthly instalments in the amount of $102.00. While we urge that the District Court was without jurisdiction to enter a declaratory judgment (See Point III, *infra*), nevertheless, should it be held that a district court sitting as a court of claims under the Tucker Act possesses ju-

risdiction to enter a declaratory judgment, we submit, in the light of the life expectancy of the petitioner the jurisdictional limitation of the District Court has been exceeded.[9] See *Brotherhood of Locomotive Firemen and Enginemen* v. *Pinkston*, 293 U. S. 96. The amended complaint asks (R. 6) a declaratory judgment as to future payments; as a result it presents a claim exceeding $10,000 and deprives the District Court of jurisdiction to hear the cause.

II

THE ADMINISTRATIVE REMEDY AFFORDED BY THE CIVIL SERVICE RETIREMENT ACT IS EXCLUSIVE

The law is well settled that the United States may be sued only in such courts and on such conditions as it may see fit. *United States* v. *Babcock*, 250 U. S. 328, 331; *Schillinger* v. *United States*, 155 U. S. 163, 166. It is likewise well settled that it may establish rights against itself without remedy to enforce such rights and that it may grant a remedy purely administrative to the exclusion of the courts. *Tatum* v. *United States*, 270 U. S. 568, 576; *Lynch* v. *United States*, 292 U. S. 571, 581–582.

It seems clear, from the intricate machinery set up in the various governmental departments for the purpose of carrying the provisions of the Re-

[9] The American Experience Table of Mortality places the life expectancy of a man of 58 at 15.39 years.

tirement Act into effect and from the provisions for appeals from administrative decisions, that the Congress contemplated solely an administrative procedure and intended the remedy accorded by the Act to be exclusive. Manifestly, Congress would not have provided this complex system had it intended to give rise to claims justiciable in the courts under the Tucker Act.

Thus Section 13 of the Act of 1926, as amended by the Act of 1930 (c. 349, 46 Stat. 468, 477), provides that applications for annuities shall be in the form prescribed by the Commissioner of Pensions, and, insofar as may be necessary to determine the rights of the applicant, shall be supported by certificates from the heads of departments, branches, or independent offices of the Government in which the applicant has been employed. Upon receipt of satisfactory evidence, the Commissioner of Pensions is directed forthwith to adjudicate the claim of the applicant, and if the right of the applicant to an annuity be established, a certificate to that effect is to be issued to the annuitant.[10]

---

[10] By Executive Order dated July 21, 1930, the functions of the Bureau of Pensions were transferred to the Veterans' Administration. By Executive Orders dated April 7, 1934, and June 5, 1934, the functions vested in the Veterans' Administration pertaining to the administration of Civil Service Retirement activities were transferred to the United States Civil Service Commission.

Section 15 of the Act, reenacted May 29, 1930, c. 349, 46 Stat. 468, 478, requires the Civil Service Commission to keep a record of appointments, transfers and changes in grade, separations from service, and other data concerning individual service, as may be deemed essential to a proper determination of the rights conferred by the Act and to furnish the Commissioner of Pensions with such information therefrom as he shall request, for the proper adjustment of any claim arising under the Act.

Section 16 of the Act, reenacted May 29, 1930, c. 349, 46 Stat. 468, 478, provides for the creation of a board of actuaries charged with the duty of recommending to the Commissioner of Pensions such changes as may be deemed necessary to protect the public interest and to maintain the system on a sound financial basis, and to prepare such tables as may be required by the Commissioner of Pensions for the purpose of computing annuities.

Section 17 of the Act, reenacted May 29, 1930, c. 349, 46 Stat. 468, 478, authorizes the Commissioner of Pensions, under the direction of the Secretary of the Interior, to perform all acts and to make such rules and regulations as may be necessary and proper to carrying out the provisions relating to the benefits conferred by the Act. It also provides that—

> An appeal to the Secretary of the Interior shall lie from the final action or order of the

> Commissioner of Pensions affecting the rights or interests of any person or of the United States under this Act, the procedure on appeal to be as prescribed by the Commissioner of Pensions, with the approval of the Secretary of the Interior.

The Commissioner, through the Secretary of the Interior, is also required to report to the Congress all receipts and disbursements in respect of annuities or other provisions of the Act. The Secretary of the Interior submits annually to the Bureau of the Budget estimates of the appropriations necessary to finance the Retirement and Disability Fund.

This Court has on repeated occasions held that statutes, such as the one under consideration, confer no right to sue, but only the right to administrative determination. *Meadows* v. *United States,* 281 U. S. 271 (application for reinstatement of a lapsed policy under the World War Veterans' Act); *Williamsport Wire Rope Co.* v. *United States,* 277 U. S. 551 (claim for review of a special assessment of war and excess-profits taxes); *United States* v. *Atchison, Topeka & Santa Fe R. Co.,* 249 U. S. 451 (claim for additional compensation for transportation); *Silberschein* v. *United States,* 266 U. S. 221 (claim for veterans' disability compensation); *United States* v. *Williams,* 278 U. S. 255 (claim for adjusted compensation); *United States* v. *Babcock,* 250 U. S. 328 (claim for com-

pensation for loss of personal property suffered by an officer in the Army). These cases, we submit, are controlling.

The reasoning of this Court in the *Williamsport* case (277 U. S. at 561) would seem to be particularly apposite in the case at bar. Jurisdiction, if any, must rest upon the provisions of the Tucker Act, which long antedates the Retirement Act. And it appears by the latter Act, and the amendments thereto, that the Congress intended to vest final authority in an administrative agency.

Whenever the Congress grants a specific remedy on a claim against the Government, the presumption is that the remedy is exclusive, and that no suit may be brought thereon under the Tucker Act. *United States* v. *Atchison, Topeka & Santa Fe R. Co., supra; United States* v. *Babcock, supra; United States* v. *Pfitsch,* 256 U. S. 547. For example, in view of the fact that a specific remedy is granted by the World War Veterans' Act for the adjudication of a claim for benefits arising under a veterans' insurance policy, no suit thereon lies in the District Court under the Tucker Act, *Mara* v. *United States,* 54 F. (2d) 397, 399 (S. D. N. Y.), or in the Court of Claims, *McBean* v. *United States,* decided November 5, 1934, not yet reported.

The petitioner, however, contends that even if it be conceded that all questions of fact in relation to the computation of an annuity are to be decided

by an administrative official, nevertheless a decision of the administrative official is conclusive only on questions of fact, and that questions of law are open to judicial review. He states that in the instant case there is no disputed question of fact, but only a disputed question of law, namely, whether a field deputy marshal is an employee of the United States. On page 26 of his brief, the petitioner sets forth a number of cases which he contends support his proposition that a right of judicial review exists.

While it is true that these cases support the general proposition that where rights are to be determined by an administrative official, only his determination of questions of fact is final, and that any obvious error of law which he commits is subject to judicial review, nevertheless they also support the proposition that the Congress can, by appropriate legislation, completely remove from the courts any power of review. However, in the case at bar, it is unnecessary to determine if Congress did in fact intend to preclude any judicial review. It may well be that if the ruling of an administrative official on questions of law is obviously incorrect, the petitioner might bring a writ of mandamus to compel the issuance of an annuity certificate and if upon the issuance of such certificate the compensation provided therein was not paid, mandamus again would lie to compel such payment. As was stated by this Court in *Miguel* v. *McCarl,* 291 U. S. 442, 451:

> Where the duty in a particular situation is so plainly prescribed as to be free from doubt and equivalent to a positive command, it is regarded as being so far ministerial that its performance may be compelled by mandamus, unless there be provision or implication to the contrary.

We submit, therefore, that the sole remedy of which the petitioner may avail himself is that of mandamus.

Still another reason impels us to submit that a suit will not lie in a district court under the Tucker Act for the recovery of compensation. The annuity is payable from the Civil Service Retirement and Disability Fund. This fund is specifically exempt from attachment or any other legal process.[11] Under the plain language of the statute, no judgment of any court can possibly reach this fund. Were judgment given in favor of the petitioner, it would follow that, unless the law were changed, this judgment would have to be satisfied out of the ordinary revenues of the Government after the judgment had been reported to Congress for appropriation. This is plainly contradictory of the Retirement Act, which contemplates the payment of annuities from the fund alone. It follows

[11] Section 18 of the Act, reenacted May 29, 1930, c. 349, 46 Stat. 479 (U. S. C., Title 5, Section 729), provides:

"None of the moneys mentioned in this Act shall be assignable, either in law or equity, or be subject to execution, levy, or attachment, garnishment, or other legal process."

that the remedy conferred is exclusively administrative.

The petitioner contends that if the rule of the decision below be affirmed, he will be deprived of his property without due process of law. This contention is without merit and fails to give consideration to the remedies, administrative in nature, which are still open to him. He may, by administrative methods, recover the entire amount which he has contributed to the Retirement Fund, together with interest compounded thereon, or he may by administrative procedure obtain the considerably more valuable benefit of a life annuity of $555.60.[12] Thus the petitioner's rights are adequately protected. A contract should be clearly proved before it invokes the protection of the Federal Constitution. *Town of Concord* v. *Savings Bank,* 92 U. S. 625, 630. Under the administrative rulings the petitioner will receive an annuity much more valuable than the amount of his contributions. He therefore complains only that he has not been given as large a gratuity as he would like. The situation thus seems indistinguishable from that of a pension, which the Government may bestow or withdraw at its will. *Lynch* v. *United States, supra,* 577, and cases cited. Moreover, there is no vested right to sue the Government. The Congress may grant consent to be sued or withdraw such consent at will, and such action does not constitute a depriva-

[12] Section 7 of the Act of May 29, 1930, c. 349, 46 Stat. 468, 474.

tion of due process of law. *Lynch* v. *United States, supra; United States* v. *Babcock, supra; Schillinger* v. *United States, supra.* We think it clear, therefore, that no constitutional rights of the petitioner have been denied by the decision of the court below.

III

A DISTRICT COURT HAS NO JURISDICTION TO RENDER A DECLARATORY JUDGMENT IN A SUIT AGAINST THE UNITED STATES UNDER THE TUCKER ACT

The consent of the United States to be sued is conferred by the Tucker Act, which embraces the entire jurisdiction of the Court of Claims and of district courts sitting as courts of claims to render judgments against the United States. A district court of the United States, in effect, sits as a court of claims when entertaining an action brought under the Tucker Act. *United States* v. *Pfitsch,* 256 U. S. 547. When so sitting it may entertain claims only for actual damages on money demands. See *Nortz* v. *United States,* 294 U. S. 317, 327; *Marion & Rye V. R. Co.* v. *United States,* 270 U. S. 280, 282; *United States* v. *Jones,* 131 U. S. 1. The limitations of the Tucker Act are jurisdictional (see *Finn* v. *United States,* 123 U. S. 227; *United States* v. *Wardwell,* 172 U. S. 48, 52) and statutes giving consent to be sued and waiving sovereign immunity must be strictly construed. *United States* v. *Michael,* 282 U. S. 656, 659–660.

The Declaratory Judgment Act of June 14, 1934, c. 512, 48 Stat. 955, conferred upon courts of the United States the power, in an action within their jurisdiction, to declare rights in cases of actual controversy. This, obviously, must be held to refer to the ordinary jurisdiction of such district courts, and does not extend to the specific jurisdiction of such district courts when sitting as courts of claims under the Tucker Act.

Finally, as was suggested in Point I of this brief, were district courts empowered to enter declaratory judgments under the Tucker Act, it would in many instances, and specifically in the instant case, defeat itself, because the declaratory judgment would exceed the sum of $10,000, which is the jurisdictional limit of district courts under the Tucker Act. We submit, therefore, that the Declaratory Judgment Act neither conferred nor was intended to confer jurisdiction upon district courts to enter declaratory judgments when sitting as courts of claims.

IV

WHILE SERVING AS A FIELD DEPUTY MARSHAL BETWEEN THE YEARS 1895 AND 1902, THE PETITIONER WAS NOT AN EMPLOYEE IN THE CIVIL SERVICE OF THE UNITED STATES WITHIN THE MEANING OF THE RETIREMENT LEGISLATION

The time of service for eligibility for annuities under the retirement legislation:

> * * * shall be computed from the date of original employment, whether as a classi-

> fied or an unclassified employee in the civil service of the United States, * * * including periods of service at different times and in one or more departments, branches, or independent offices, or the legislative branch of the Government, and also periods of service performed overseas under authority of the United States, * * *. (Sec. 5 of the Act of May 29, 1930, c. 349, 46 Stat. 468, 472.)

The question here is whether a field deputy marshal compensated on a fee basis is an employee, classified or unclassified, in the civil service of the United States.

Under Section 843 of the Revised Statutes, the marshal was compensated by fees. Section 780 authorized the marshal to appoint deputy marshals, removable from office by the judge of the district or circuit court. Section 841 provided for the payment of a deputy marshal from the fees of the marshal. Section 9 of the Act of May 28, 1896 (c. 252, 29 Stat. 140, 181), puts the marshal on a salary basis in lieu of fees; Section 10 of that Act provides for the appointment by the marshal, with the permission of the Attorney General, of office deputies at salaries to be fixed by the Attorney General; Section 11 authorizes the marshal to appoint deputy marshals who shall be known as field deputies, and who shall hold office during the pleasure of the marshal, unless sooner removed by the district court, and who shall receive as compensation three-fourths of the gross fees, including mileage earned

by them, not exceeding $1,500 per annum, and such appointment may be canceled at any time, in the public interest, by the Attorney General.

In *Douglas* v. *Wallace,* 161 U. S. 346, it was held that a deputy marshal is the personal employee of the marshal and has no claim whatever against the United States for his compensation. To the same effect are *United States* v. *McDonald,* 72 Fed. 898, 900 (C. C. A. 9th); *Wintermute* v. *Smith,* 30 Fed. *Cas.* 17, 897 (S. D. O.); *Powell* v. *United States,* 60 Fed. 687 (C. C. M. D., Ala.)

The status of field deputy marshals under the Act of May 28, 1896, is precisely the same as that of the deputy marshals under the prior legislation, and the authorities cited above are applicable to them. They are employees of the marshal and are not employees in the service of the United States within the meaning of the retirement legislation.[13]

Other considerations would seem to support the view that a field deputy marshal, or time served by him, is not within the purview of the retirement legislation. Section 3 of the Act of May 29, 1930, specifying the eligible employees, contains the provision:

> *Provided,* That these groups shall include only those employees whose tenure of employment is not intermittent nor of uncertain duration.

[13] Even at the present time field deputy marshals are not listed as civil service employees for the purpose of benefiting by the Retirement Act. Nor are any deductions for such purpose made from their fees.

This would seem to contemplate inclusion only of such employees with some definite compensation and some security and continuity of service. A field deputy marshal compensated by fees would not seem to be in such class, and if the petitioner had served his entire time as a field deputy marshal, it would seem clear that he would not be entitled to any annuity.

The fact that petitioner was permitted to deposit an amount of $970.09 in the retirement fund has no significance as to the question presented. The deposit was authorized by the Act, and represented deductions from salary for services after July 31, 1920, to the time when monthly deductions were automatically made from petitioner's salary. The time served by petitioner as field deputy marshal was not considered, and the question here involved was not presented in any way. The petitioner, being over 55 years of age at the time that he severed his connection with the Government, and having a period of service to his credit of more than fifteen years, excluding the time served as a field deputy marshal, was entitled to an annuity under the Act, and the acceptance of his deposit to the retirement fund in order to make him eligible for such annuity was therefore proper. He was not entitled, however, to any annuity under the Act of June 16, 1933, on the basis of thirty years of service, as awarded by the court. We submit, therefore, that the ruling of the Veterans' Administration in the matter was correct.

CONCLUSION

We respectfully submit that the decree of the court below was correct, and should be affirmed.

STANLEY REED,
Solicitor General.

JAMES W. MORRIS,
Assistant Attorney General.

ALEXANDER HOLTZOFF,
Special Assistant to the Attorney General.

PAUL A. SWEENEY,
M. LEO LOONEY, JR.,
Attorneys.

DECEMBER 1935.

APPENDIX

The Tucker Act, as amended by Section 24 of the Judicial Code, c. 231, 36 Stat. 1087, 1093 (U. S. C., Title 28, Sec. 41), provides in part as follows:

> The district courts shall have jurisdiction as follows:
>
> * * * * *
>
> Twentieth. Concurrent with the Court of Claims, of all claims not exceeding ten thousand dollars founded upon the Constitution of the United States or any law of Congress, or upon any regulation of an Executive Department, or upon any contract, express or implied, with the Government of the United States, or for damages, liquidated or unliquidated, in cases not sounding in tort, in respect to which claims the party would be entitled to redress against the United States, either in a court of law, equity, or admiralty, if the United States were suable, and of all set-offs, counter-claims, claims for damages, whether liquidated or unliquidated, or other demands whatsoever on the part of the Government of the United States against any claimant against the Government in said court: *Provided, however,* That nothing in this paragraph shall be construed as giving to either the district courts or the Court of Claims jurisdiction to hear and determine claims growing out of the late Civil War, and commonly known as "war claims," or to hear and determine other claims which

had been rejected or reported on adversely prior to the third day of March, eighteen hundred and eighty-seven, by any court, department, or commission authorized to hear and determine the same, or to hear and determine claims for pensions; or as giving to the district courts jurisdiction of cases brought to recover fees, salary, or compensation for official services of officers of the United States or brought for such purpose by persons claiming as such officers or as assignees or legal representatives thereof; but no suit pending on the twenty-seventh day of June, eighteen hundred and ninety-eight shall abate or be affected by this provision: *And provided further,* That no suit against the Government of the United States shall be allowed under this paragraph unless the same shall have been brought within six years after the right accrued for which the claim is made: *Provided,* That the claims of married women, first accrued during marriage, of persons under the age of twenty-one years, first accrued during minority, and of idiots, lunatics, insane persons, and persons beyond the seas at the time the claim accrued, entitled to the claim, shall not be barred if the suit be brought within three years after the disability has ceased; but no other disability than those enumerated shall prevent any claim from being barred, nor shall any of the said disabilities operate cumulatively. All suits brought and tried under the provisions of this paragraph shall be tried by the court without a jury.

The Act of May 29, 1930, c. 349, 46 Stat. 468, 471, 478, provides in part as follows:

SEC. 4. The annuity of an employee retired under the provisions of the preceding sections of this Act shall be a life annuity,

terminable upon the death of the annuitant and shall be composed of: (1) a sum equal to $30 for each year of service not exceeding thirty: *Provided,* That such portion of the annuity shall not exceed three-fourths of the average annual basic salary, pay, or compensation received by the employee during any five consecutive years of allowable service at the option of the employee; and (2) the amount of annuity purchasable with the sum to the credit of the employee's individual account as provided in section 12 (a) hereof, together with interest at 4 per centum per annum compounded on June 30 of each year, according to the experience of the civil-service retirement and disability fund as may from time to time be set forth in tables of annuity values by the Board of Actuaries: *Provided,* That the total annuity paid shall in no case be less than an amount equal to the average annual basic salary, pay, or compensation, not to exceed $1,600 per annum, received by the employee during any five consecutive years of allowable service at the option of the employee, multiplied by the number of years of service, not exceeding thirty years, and divided by forty: *And provided further,* That any employee at the time of his retirement may elect to receive, in lieu of the life annuity herein described, an increased annuity of equivalent value which shall carry with it a proviso that no unexpended part of the principal upon the annuitant's death shall be returned. For the purposes of this Act all periods of service shall be computed in accordance with section 5 hereof, and the annuity shall be fixed at the nearest multiple of twelve.

The term "basic salary, pay, or compensation," wherever used in this Act, shall be so

construed as to exclude from the operation of the Act all bonuses, allowances, overtime pay, or salary, pay, or compensation given in addition to the base pay of the position as fixed by law or regulation.

* * * * *

SEC. 17. For the purpose of administration, except as otherwise provided herein, the Commissioner of Pensions, under the direction of the Secretary of the Interior, be, and is hereby, authorized and directed to perform, or cause to be performed, any and all acts and to make such rules and regulations as may be necessary and proper for the purpose of carrying the provisions of this Act into full force and effect. An appeal to the Secretary of the Interior shall lie from the final action or order of the Commissioner of Pensions affecting the rights or interests of any person or of the United States under the Act, the procedure on appeal to be as prescribed by the Commissioner of Pensions, with the approval of the Secretary of the Interior.

The Commissioner of Pensions shall make a detailed comparative report annually showing all receipts and disbursements on account of annuities, refunds, and allowances, together with the total number of persons receiving annuities and the total amounts paid them, and he shall transmit to Congress, through the Secretary of the Interior, the reports and recommendations of the Board of Actuaries.

The Secretary of the Interior shall submit annually to the Bureau of the Budget estimates of the appropriations necessary to finance the retirement and disability fund and to continue this Act in full force and effect.

Section 8 (a) of the Act of June 16, 1933, c. 101, 48 Stat. 283, 305, provides:

> Whenever at any time hereafter prior to July 1, 1935, any employee of the United States or the District of Columbia to whom the Civil Service Retirement Act, approved May 29, 1930 (U. S. C., Supp. VI, title 5, chap. 14), applies, who has an aggregate period of service of at least thirty years computed as prescribed in section 5 of such Act is involuntarily separated from the service for reasons other than his misconduct, such employee shall be entitled to an annuity computed as provided in section 4 of such Act payable from the civil-service retirement and disability fund less a sum equal to 3½ per centum of such annuity: *Provided,* That when an annuitant hereunder attains the age which would have been the retirement age prescribed for automatic separation from the service applicable to such annuitant had he continued in the service to such retirement age, such deduction from the annuity shall cease. If and when any such annuitant shall be reemployed in the service of the District of Columbia or the United States (including any corporation the majority of the stock of which is owned by the United States), the right to the annuity provided by this section shall cease and the subsequent annuity rights of such person shall be determined in accordance with the applicable provisions of retirement law existing at the time of the subsequent separation of such person from the service.

U. S. GOVERNMENT PRINTING OFFICE: 1935